

Via ECFS

October 29, 2010

Ms. Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, TW-A325  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* Communication**  
***In the Matter of Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas, WC Docket No. 09-197***

Dear Ms. Dortch:

Standing Rock Telecommunications, Inc. ("Standing Rock"), which has a pending petition for reconsideration of certain portions of the Wireline Competition Bureau's August 24, 2010 Memorandum Opinion and Order ("Order"), wishes to summarize and file the legislative history underlying the controlling statute, 47 U.S.C. § 214(e)(6) "COMMON CARRIERS NOT SUBJECT TO STATE COMMISSION JURISDICTION", following an *ex parte* meeting with members of Commission Staff on October 14, 2010 in this matter.

The "Eligible Telecommunications Carriers Act of 1997" ("Bill") was introduced as S.1354 by Senator John McCain, then Chairman of the Senate Committee on Indian Affairs, and cosponsored by Senators Campbell, Stevens, Inouye, Daschle and Dorgan, to amend Section 214(e) of the Communications Act of 1934 (the "Act"),<sup>1</sup> all members of the Senate Committee on Indian Affairs, three of whom have also served as its Chair.

The legislative history makes clear that the Bill was intended to "enable...the Federal Communications Commission [FCC] to designate common carriers not under the jurisdiction of a State commission as eligible recipients of universal service support."<sup>2</sup> Congress acted to amend Section 214(e) of the Act because "States...have no jurisdiction over tribally owned common carriers which may or may not be regulated by a tribal authority that is not a State commission

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<sup>1</sup> Congressional Record, S12425 (Nov. 9, 1997) (containing the text of S.1354, The Eligible Telecommunications Carriers Act of 1997). The amendment was passed by the Senate on November 9, 1997 (Attached as Exhibit A)

<sup>2</sup> Congressional Record, S12568 (Nov. 13, 1997)(quoting Senator McCain) (Attached as Exhibit A).

per se.<sup>3</sup> The addition of Section 214(e)(6) "does nothing to alter the existing jurisdiction that State commissions already have over local exchange carriers or providers of commercial mobile radio services as set forth in section 332(c)(3) of the Communications Act."<sup>4</sup>

Similarly, the legislative history of consideration of S. 1354 in the U.S. House of Representatives confirms similar concerns. As House Energy & Commerce Committee Chairman Bliley stated, the statutory policy of the States designating common carriers as eligible for universal service support

ignores the fact that some common carriers providing service today are not subject to the jurisdiction of a State commission; most notably, some carriers owned or controlled by native Americans. Thus, many of these common carriers may lose Federal support on January 1, 1998, unless Congress takes action.

S. 1354 corrects this problem by permitting a common carrier that is not subject to State authority to be designated by the Federal Communications Commission as eligible to receive Federal universal service support. S. 1354 will apply to only a limited number of carriers, but to these carriers' customers, its impacts will be significant.<sup>5</sup>

Representative Hayworth of Arizona further observed that the Bill "corrects a technical glitch in section 214(e) of the Communications Act of 1934 that has created a serious problem for certain telecom carriers, particularly some Indian tribes....This is especially true in my home State of Arizona and also in South Dakota."<sup>6</sup>

And as Representative Markey observed,

[t]he provisions of the Telecommunications Act, however, did not account for the fact that in a few instances, states have no jurisdiction over telephone companies owned by certain federally-recognized Indian tribes. Because States have no jurisdiction in this area, such companies would have no way of becoming designated as eligible telecommunications carriers and receive universal service support.<sup>7</sup>

As Chairman Bliley states: "[t]he intent of this bill is to cover such situations where a State commission lacks jurisdiction over a carrier, in which case the FCC determines who is eligible to receive Federal universal service support."

Congress was particularly concerned about the impact of a failure to pass this bill resulting in "enormous rate increases" for customers of tribally owned carriers. For example, Representative

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* (Senator McCain, responding to a question from Senator Daschle).

<sup>5</sup> Congressional Record, H10807-H10808 (Nov. 13, 1997)(Chairman Bliley)(attached as Exhibit B)

<sup>6</sup> *Id.*, H10808 (quoting Rep. Hayworth).

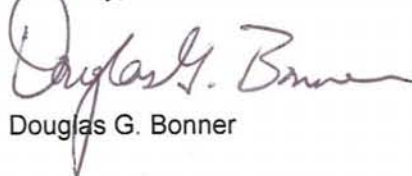
<sup>7</sup> *Id.* (quoting Rep. Markey).

Hayworth mentioned that if Gila River Telecommunications in his district in Arizona lost its Federal universal service support, "its customers could be hit with a \$32 monthly charge per subscriber" effective in January, 1998.<sup>8</sup>

As Standing Rock's petition for reconsideration requests, the Bureau should re-visit its August 24, 2010 Order designating Standing Rock as an Eligible Telecommunications Carrier to conform the Order to Section 214(e)(6) and Commission precedent<sup>9</sup>, so that the redefinition of a rural telephone company study area within tribal lands is not subject to the conditional approval of a state commission, but is redefined by the FCC, which alone has jurisdiction over a common carrier not subject to state jurisdiction under the statute.

Subjecting such a redefinition to state commission consent contravenes the letter of Section 214(e)(6), and Congress' intent in enacting this amendment. The result is that such a provision in the August 24, 2010 ETC designation order is denying the majority of Standing Rock's customers with federal universal service support (and would similarly deny any other carrier owned by a federally recognized tribe universal service support if a similar condition were imposed) that should have been effective August 24, 2010, as the vast majority of Standing Rock's existing customers reside in wire centers of the subject rural telephone company.

Sincerely,



Douglas G. Bonner

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Enclosures

Cc: Irene Flannery  
Vickie Robinson  
Divya Shenoy  
Geoffrey Blackwell

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<sup>8</sup> *Id.* (quoting Rep. Hayworth); see also, *id.* H10809(quoting Rep. Tauzin)("Failure to enact S. 1354, may force rates to increase for local telephone service in many Native American communities as a result of certain carriers" being excluded from the definition of an ETC).

<sup>9</sup> See, *Western Wireless*, 16 FCC Rcd 18133 (2001).